Human Rights and National Security: The Strategic Correlation

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For most of the past fifty years, U.S. foreign policymakers have largely viewed the promotion of human rights and the protection of national security as in inherent tension. Almost without exception, each administration has treated the two goals as mutually exclusive: promote human rights at the expense of national security or protect national security while overlooking international human rights. While U.S. policymakers have been motivated at times by human rights concerns, such concerns have generally been subordinate to national security. For example, President Bush's 2002 U.S. *National Security Strategy* speaks of a "commitment to protecting basic human rights." In the same document, President Bush makes it clear that "defending our Nation against its enemies is the first and fundamental commitment of the Federal Government."[1] This subordination of human rights to national security is both unnecessary and strategically questionable. A more effective U.S. foreign policy would view human rights and national security as correlated and complementary goals. Better protection of human rights around the world would make the United States safer and more secure. The United States needs to restructure its foreign policy accordingly.

This Article presents a strategic—as opposed to ideological or normative—argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post–Cold War period

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1. PRESIDENT OF THE UNITED STATES OF AMERICA, NATIONAL SECURITY STRATEGY OF THE UNITED STATES (Sept. 2002), *at* http://www.whitehouse.gov/nsc/nss.pdf [hereinafter NATIONAL SECURITY STRATEGY] (last visited Jan. 5, 2004).

indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and global security.

Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression.[2] If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

In some cases this linkage yields only minor changes in actual policy—for example, greater scrutiny of particular states with troubling human rights records or an increased emphasis on human rights in our bilateral dialogues with some states. However, where human rights have largely been marginalized by national security concerns, such as in U.S.-China or U.S.-Russia relations, the strategic linkage could be reason to focus on—rather than overlook—human rights abuses in Chechnya, Tibet, and elsewhere.

Part I of this Article considers the present structure of U.S. human rights policy and its perceived tension with national security. Part II analyzes the instances of the aggressive use of force in the post–Cold War world and suggests a correlation between domestic human rights repression and interstate aggression. Part III considers the possible avenues of causation that could account for the observations in Part II. Part IV explores how recognizing the correlation between domestic human rights abuse and international aggression would change U.S. foreign policy.

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2. Most recently this position has been articulated by President George W. Bush: "We will defend the peace against the threats from terrorists and tyrants. We will preserve the peace by building good relations among the great powers. And we will extend the peace by encouraging free and open societies on every continent." President's Commencement Address of June 1, 2002 at the United States Military Academy in West Point, New York, 38 WKLY. COMP. PRES. DOC. 945 (June 10, 2002).

I. The Traditional Separation of Human Rights and National Security

Since the birth of the human rights movement in the mid-twentieth century, the promotion of human rights has been seen as competing with or even compromising core issues of national security. Promoting human rights has long been viewed as a luxury, to be pursued when the government has spare diplomatic capacity and national security is not being jeopardized. In the words of a former member of Congress, there is a deeply held belief within the U.S. government that "there will always be a tension between our foreign policy as classically defined in terms of the United States' economic, political, and strategic interests and our human rights interests."[3] The result of this perceived competition has often been the marginalization of human rights in U.S. foreign policy.

Though the Universal Declaration of Human Rights was adopted by the U.N. General Assembly on December 10, 1948,[4] it was not until the end of the Vietnam War that human rights issues entered into the foreign policymaking calculus.[5] Between 1973 and 1976, new Congressional legislation forced the executive branch to begin to address human rights issues, requiring the President to submit to Congress human rights reports on those countries receiving foreign aid.[6] Nonetheless, human rights remained on the sidelines of foreign policymaking. Secretary of State Henry Kissinger's well-known view that the international advocacy of human rights was incompatible with national security[7] manifested itself in his resistance to, and partial refusal to comply with, the new Congressional reporting requirements.[8]

The subordination of human rights to national security has manifested itself in the past three decades of U.S. foreign policy. This is not to say that human rights never motivate U.S. foreign policy. In some cases, such as the 1999 intervention in Kosovo or the pressure on South Africa throughout the late 1980s, human rights were a driving factor. Rather, the point is that human

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3. *Human Rights and U.S. Foreign Policy: Hearing Before the Subcomm. on Int'l Orgs., House Comm. on Foreign Affairs,* 96th Cong. 254 (1980) (statement of Bruce P. Cameron, Foreign Policy Legislative Representative, Americans for Democratic Action).

4. Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810, at 71(1948).

5. *See* John Shattuck, *Diplomacy with a Cause: Human Rights in U.S. Foreign Policy*, *in* Realizing Human Rights: Moving from Inspiration to Impact 265, 269 (Samantha Power & Graham Allison eds., 2000) (observing that "in the 1970s, amid discontent over Vietnam, Watergate, and U.S. support for dictatorships . . . , Congress began to assert itself with a louder voice in the U.S. foreign policy decision-making process" advocating issues such as human rights). Before that time, "U.S. officials filtered human rights diplomacy through the prism of Soviet containment policy," preventing it from becoming an independent foreign policy force. *Id.*

6. *See id.* at 269–70.

7. *See* United States Institute for Peace, *U.S. Human Rights Policy: A 20 Year Assessment* (1999), *available at* http://www.usip.org/pubs/specialreports/sr990616.html (last visited Nov. 7, 2003) (noting that "Carter rejected the linkage argument used by Kissinger, which held that promoting human rights jeopardized other foreign policy goals").

8. *See* Shattuck, *supra* note 5, at 270.

rights policies have generally given way in a perceived competition with security concerns. As David Forsythe states: "a variety of domestic factors in the United States combined after the Cold War to ensure some attention to human rights in foreign policy, but also to ensure that the government did not pay a high price to see those principles advanced in world affairs."[9]

Under the leadership of President Carter, it appeared to many that human rights would move to the center of U.S. policymaking, yet this goal was never realized. Although Congress created the post of State Department Coordinator for Human Rights and Humanitarian Affairs in 1976, and President Carter elevated the position to an Assistant Secretary level,[10] the position has "had little special clout in most administrations whether Democrat or Republican."[11] In his inaugural address, Carter declared: "our moral sense dictates a clear-cut preference for those societies which share with us an abiding respect for individual human rights."[12] Nonetheless, in implementation if not rhetoric, national security goals were still viewed as conflicting with the human rights agenda. Carter's Secretary of State remarked to Congress in 1977 that "we must balance a political concern for human rights against economic and security goals."[13]

During the first eleven months of the Reagan Administration, the position of Assistant Secretary for Human Rights was left vacant,[14] and human rights policy was largely subjugated to the ideological battle with communism. As three leading nongovernmental organizations observed in 1982, "The Reagan Administration has cheapened the currency of Human Rights by invoking its principles to criticize governments it perceives as hostile to the United States and by denying or justifying abuses by governments it perceives as friendly . . . ."[15] Take, for example, El Salvador, which, at the time had a brutal and repressive government. The Reagan administration continued to certify the government's human rights record so as to be able to provide military assistance in the on-going conflict with socialist Salvadoran rebel forces.[16] A similar pattern is seen with countless other states.[17]

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9. David P. Forsythe, *U.S. Foreign Policy and Human Rights: The Price of Principles After the Cold War*, *in* Human Rights and Comparative Foreign Policy 24 (David P. Forsythe ed., 2000).

10. The post was established through Section 301 of the International Security Assistance and Arms Export Control Act of 1976. *See* Shattuck, *supra* note 5, at 270.

11. *See* Forsythe, *supra* note 9, at 21, 26.

12. James Earl Carter, Inaugural Address, Pub. Papers: Jimmy Carter 3 (Jan. 20, 1977). Similarly, Zbigniew Brzezinski, Carter's National Security Advisor, expressed a determination to "demonstrate the primacy of the moral dimension of foreign policy." Zbigniew Brzezinski, Power and Principle 81 (1985).

13. Secretary Cyrus Vance, *quoted in* American Association for the International Commission of Jurists, Human Rights and U.S. Foreign Policy: The First Decade, 1973–1983, at 21 (1984). For example, while "human rights performance became a dominant factor" in relations with some Latin American states, "such considerations were clearly subordinate in weighing military aid to Egypt, Israel, North Yemen, and Saudi Arabia." *Id.*

14. United States Institute for Peace, *supra* note 7.

15. America's Watch et al., The Reagan Administration's Human Rights Policy: A Mid-Term Review (Dec. 10, 1982).

16. *Id.* at 21.

Jack Donnelly observes that Reagan's policies "reveal a deep reluctance to sacrifice even minor economic interests, let alone security interests, for human rights."[18]

Though President Clinton stated in 1997 that "advancing human rights must always be a central pillar of America's foreign policy,"[19] human rights remained subordinate to national security. Human rights advocacy gave way to economics in the U.S. relationship with China.[20] Though Clinton was eventually willing to risk U.S. lives in Bosnia, where there was a security interest in European stability, he was unwilling to do so in Rwanda.[21] As Samantha Power observes: in order "to avoid engagement in a conflict that posed little threat to American {security} interests" the Clinton Administration engaged in an "almost willful delusion that what was happening in Rwanda did not amount to genocide."[22]

Even today, human rights concerns continue to be subordinate to national security issues.[23] Possibly the most obvious explanations of current policy are the September 11 terrorist attacks and the new American perception of vulnerability. If Americans believe they are under threat and human rights are viewed in competition with national security, it is no surprise that protecting the homeland will trump human rights promotion. Despite the growing role of the human rights movement, the critical element in "determining American foreign policy is what assets—bases, intelligence and diplomatic leverage—it can bring to bear against Al Qaeda," Iraq, and other states seen as threats to the United States.[24]

While the 2002 *National Security Strategy* speaks about advancing human rights, its "focus is protecting America."[25] The rhetoric and reality of the 2003 Iraq war and occupation affirm that the Administration's "priority will be first to disrupt and destroy terrorist organizations of global reach and attack their leadership."[26]

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17. *See generally id.*

18. United States Institute for Peace, *supra* note 7.

19. President William J. Clinton, Remarks in New York City Commemorating the 50th Anniversary of the Universal Declaration of Human Rights, 2 PUB. PAPERS 1732 (Dec. 9, 1997), *available at* http://clinton4.nara.gov/WH/New/html/19971210-10278.html (last visited Nov. 22, 2003).

20. President Clinton repeatedly renewed China's most favored nation trade status despite significant criticism of its human rights record. *See* David E. Sanger, *Support Shrinks for China's Trade Status*, N.Y. TIMES, June 4, 1999, at A19.

21. *See* Clinton, *supra* note 19.

22. Samantha Powers, *Why The United States Let the Rwandan Tragedy Happen*, ATLANTIC MONTHLY, Sept. 2001, at 84, 104.

23. *See, e.g.*, Michael Ignatieff, Editorial, *Is the Human Rights Era Ending?*, N.Y. TIMES, Feb. 5, 2002, at A25 (observing that "Western pressure on China to honor human rights, never especially effective, has stopped altogether. Chinese support for the war on terror has secured Western silence . . . .").

24. *Id.*

25. NATIONAL SECURITY STRATEGY, *supra* note 1, at 7.

26. *Id.*

II. Human Rights and Aggression in the Post–Cold War World

Though national security has largely trumped human rights in the formulation of U.S. policy, this is not necessary, appropriate, nor even strategic. Rather than being competing goals, human rights and national security are in fact complementary. This section seeks to demonstrate a correlation between domestic human rights abuses and interstate aggression in the post–Cold War period. Three basic hypotheses result:

1. States that systematically abuse human rights at home are most likely to engage in international aggression.
2. States with average or good human rights records are unlikely to engage in international aggression.
3. Human rights respecting states may still engage in international interventions (usually in conformity with international law) at least in part to protect the human rights of citizens in a state that seriously and systematically abuses the rights of its own citizens.[27]

If this suggested correlation is accurate, a foreign policy that actively advances human rights around the world can enhance both national and global security by decreasing the number of states likely to engage in international aggression and the destabilizing consequences associated therewith.

Clearly, this argument is closely linked with the democratic peace hypothesis—namely that democratic states will not go to war with one another.[28] However, it highlights as causal an often underappreciated element of the democratic peace literature—a state's institutionalized and actual respect for its own citizens—and uses that element to make a policy argument. The very concept of "democratic peace" is largely a short-hand reference to a number of different traits that characterize democracies—the nature of elections, institutional safeguards, or the normative beliefs democracies tend to hold. As Michael Doyle observes: "Liberal states, founded on such individual rights as equality before the law, free speech and other civil liberties, private property, and elected representation are fundamentally against war."[29] The human rights peace argument presented here draws on this element of insti-

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27. The claim here is not that human rights will be the exclusive driver of such interventions or that interventions will occur in every case of human rights abuse, but rather that when interventions occur, human rights will play a genuine, though probably not exclusive, role.

28. John Owen has argued that "liberal ideas [as mediated through liberal institutions] cause liberal democracies to tend away from war with one another, and that the same ideas prod these states into war with illiberal states." John M. Owen, *How Liberalism Produces Democratic Peace*, Int'l Security, Fall 1994, at 87, 88. For further reading on the democratic peace hypothesis, see generally Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs*, 12 Phil. and Pub. Aff. 205 (1983); David A. Lake, *Powerful Pacifists: Democratic States and War*, 86 Am. Pol. Sci. Rev. 24 (1992) (presenting an institutionalist explanation for the democratic peace based on rent-seeking); T. Clifton Morgan & Sally Howard Campbell, *Domestic Structure, Decisional Constraints, and War: So Why Kant Democracies Fight?* 35 J. Conflict Resol. 187 (1991) (explaining the democratic peace based on decisional rules in democracies).

29. Michael W. Doyle, *Liberalism and World Politics*, 80 Am. Pol. Sci. Rev. 1151, 1151 (1986).

tutional safeguards and actual practices that protect their citizens' human rights. Such states may or may not be democracies though they, by and large, have and uphold liberal constitutions. The claim here is that far more important than whether a state is "democratic" is whether it protects the basic rights of all its citizens through a form of constitutional liberalism.[30]

An important caveat is necessary before turning to key cases. It is neither intended nor possible here to demonstrate a statistically significant correlation between domestic human rights abuse and interstate aggression. The post–Cold War time period does not provide sufficient data for statistical proof of correlation.[31] Nonetheless, as this analysis draws on one of the specifications of "democratic states" in some of the democratic peace literature—namely the institutionalized freedoms and rule of law—that literature buttresses the statistical relevance of the argument presented here.[32]

A few key definitions must be specified before proceeding.[33] In order to minimize possible definitional criticism, this paper takes a very thin definition of human rights and a restrictive position on what constitutes a human rights abusing state. It employs what Michael Ignatieff refers to as human rights as "agency" or "negative liberty"—the "capacity of each individual to achieve rational intentions without let or hindrance."[34] Such an approach implies that individuals must be able to "choose the life that they see fit to lead . . . within the broader frame of cultural and religious beliefs they live by."[35] For human beings to possess such agency they must, at a minimum, have freedom of thought and freedom from extrajudicial infringement on their bodily integrity. It is not necessary to the core argument to investigate in great detail the human rights policies of the states in question.[36] Telling indicators of a state's human rights record are Freedom

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30. By "constitutional liberalism" Fareed Zakaria refers to the "tradition . . . that seeks to protect an individual's autonomy and dignity against coercion, whatever the source—state, church or society." FAREED ZAKARIA, THE FUTURE OF FREEDOM 19 (2003). He stresses the "tension between constitutional liberalism and democracy," noting that "constitutional liberalism is about the limitation of power; democracy is about its accumulation and use." *Id.* at 101–02.

31. This time period has been chosen because the end of bipolar balancing has produced a qualitatively different set of conflicts and interventions than existed prior. This choice, however, yields a very limited data set based on the number of aggressive conflicts in the period. Therefore the approach here is to show correlation through brief case studies rather than to engage in statistical analysis. Though this methodology is necessary, its drawback is that it cannot isolate alternative variables such as economic development, governance structures, or minority composition.

32. While this has been an element of some of the democratic peace literature, it has rarely been singled out as causal and never framed in human rights terms or used to develop an alternative foreign policy. *See, e.g.*, Owen, *supra* note 28, at 99 (suggesting that "structures that protect the right of each citizen to self-government" including "[f]reedom of speech" are a necessary component of the democratic state for the purposes of democratic peace literature). Future studies might reexamine democratic peace data sets to isolate human rights protection as a causal variable.

33. The democratic peace literature has been subject to some criticism for choosing definitions that selectively exclude certain troublesome questions. *See* Owen, *supra* note 28, at 87.

34. MICHAEL IGNATIEFF, HUMAN RIGHTS AS POLITICS AND IDOLATRY 57 (2001).

35. *Id.*

36. Rather than catalog a series of particular events and episodes, this Article relies on composite data produced by governments, NGOs, and international organizations. Most of the cases of human rights

House's annual surveys of freedom in the world, and particularly Freedom House's civil liberties figures, which are closely correlated with basic human rights protection.[37] Similarly, Amnesty International, Human Rights Watch (HRW), and the U.S. Department of State produce annual country-specific human rights data.[38] Taken collectively, the overall findings of such studies can give a clear indication of whether a state is systematically violating the most basic human rights.

Aggression is equally challenging to define—neither the U.N.'s International Law Commission nor the International Criminal Court (ICC) Preparatory Commission has been able to reach a definition.[39] For the purposes of this paper "aggression" will be defined as the violation by one state of the territorial integrity of another state with military force, not in self defense, not authorized by the U.N. Security Council or not undertaken with a broad international coalition and granted ex-post ratification by the Security Council.[40] In arguable cases—such as the 2003 U.S.-led war in Iraq—this paper will consider the implications of both including and excluding a particular case from classification as "aggression."

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abuse discussed herein are sufficiently egregious that all these indicators point in the same direction, making a composite analysis both straight-forward and reliable. Where indicators differ, however, this analysis draws on those that speak most directly to a state's human rights policy.

37. The civil liberties index quantifies "the freedoms to develop views, institutions, and personal autonomy apart from the state." FREEDOM HOUSE, FREEDOM IN THE WORLD: 2000-2001, SURVEY METHODOLOGY, *at* http://www.freedomhouse.org/research/freeworld/2001/methodology.htm (last visited Nov. 8, 2003). Freedom House ratings consist of two numbers on a scale of one to seven, one being most free, seven being least. The first number reflects a state's political rights and the second its civil liberties. *Id. See also* FREEDOM HOUSE, FREEDOM HOUSE COUNTRY RATINGS: ANNUAL SURVEY OF FREEDOM, COUNTRY SCORES 1972-73 TO 1999-2000, *at* http://www.freedomhouse.org/ratings/ (last visited Nov. 8, 2003).

38. *See* AMNESTY INTERNATIONAL, ANNUAL REPORTS, *available at* http://www.amnesty.org/ailib/aireport/index.html (last visited Nov. 22, 2003); HUMAN RIGHTS WATCH, REPORTS BY COUNTRY, *available at* http://www.hrw.org/reports/world/index.html (last visited Nov. 22, 2003); U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, *available at* http://www.state.gov/g/drl/hr/c1470.htm (last visited Nov. 22, 2003).

39. For example, the International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind (1996) indicates that individuals should be held accountable for the crime of aggression, but fails to provide a definition thereof. *Yearbook of the International Law Commission 1996, Vol. II, Part 2: Report of the Commission to the General Assembly on the work of its Forty-Eighth Session*, DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND art. 2(2), art. 16(1), at 18, 43. UN DOC A/51/10 (1998). For the difficulty faced by the ICC in reaching a definition, see generally the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Official Records, Vol. III, Preparatory Committee on the Establishment of an International Criminal Court, at 14-15, UN Doc. A/CONF.183/13 (Vol. III) (2002). In 1999, Germany submitted its proposal on defining aggression in Preparatory Commission for the International Criminal Court (1999), UN Doc PCNICC/1999/INF/2 [hereinafter Compilation of Proposals]. *See also The Definition of Aggression and the ICC*, 96 AM. SOC'Y INT'L L. PROC. 181 (2002).

40. This definition draws particularly on the revised German proposal submitted to the ICC Preparatory Conference which defines aggression as "initiating or carrying out" an "armed attack . . . in [manifest] contravention of the Charter of the United Nations [as determined by the Security Council] . . . ." Compilation of Proposals, *supra* note 39, at 10. The definition implicitly allows for ex-post ratification of arguably aggressive acts by the Security Council. This element of the definition is open to debate and may exclude certain key cases such as the 2003 U.S.-led war in Iraq.

The major international conflicts since 1990 are: the 1990 Iraqi invasion of Kuwait; the 1991 U.S.-led Gulf War; the 1995 U.N. intervention in Bosnia; the 1998–2003 war in Congo; the 1999 war between Ethiopia and Eritrea; the 1999 NATO intervention in Kosovo; the 2001 U.S. attack on Afghanistan, and the 2003 U.S.-led war in Iraq.[41] A number of these conflicts are explicitly excluded from this study as they are not acts of international aggression as defined above.[42] The 1991 U.S.-led Gulf War and the 1992–1995 U.N. intervention in Bosnia were both authorized by the U.N. Security Council and are therefore not within the definition of aggression.[43] The 2001 U.S. attack on Afghanistan was a legitimate act of self-defense under Article 51 of the U.N. Charter and recognized by Article 5 of the NATO Treaty.[44] It is therefore also excluded. Although the 2003 U.S. war in Iraq was, arguably, undertaken with a broad international coalition and subsequently referenced by the Security Council,[45] it is treated here as an act of aggression as the Security Council has yet, as of January 2004, to fully endorse the conflict.

The first major act of interstate aggression in the post–Cold War era was the 1990 Iraqi invasion of Kuwait. On August 2, 1990 three elite Republican Guard divisions entered Kuwait and soon reached the capital. The violation of Kuwait's territorial integrity was a clear breach of Article 2(4) of the U.N. Charter and constituted an act of international aggression.[46] Over the next six months, Iraqi forces occupied Kuwait and caused significant damage to the country's population and infrastructure. A massive international response led by the United States resulted in the February 1991 liberation of Kuwait.

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41. *See, e.g.*, Monty G. Marshall & Ted Robert Gurr, Peace and Conflict 2003: A Global Survey of Armed Conflicts, Self-Determination Movements, and Democracy 13 (2003), *available at* http://www.cidcm.umd.edu/inscr/PC03web.pdf (last visited Nov. 8, 2003).

42. Note also that the conflict in Kashmir between India and Pakistan is not included despite frequent border clashes as it has not resulted in prolonged open hostilities in which one state has clearly violated the territorial integrity of the other through the use of military force. While border fighting has occurred, international aggression as defined herein has not.

43. *See* S.C. Res. 678, 45th Sess., 2963rd mtg., U.N. Doc. S/RES/678 (1990) (authorizing the use of "all necessary means" to ensure the Iraqi withdrawal from Kuwait); S.C. Res. 743, 47th Sess., 3055th mtg., U.N. Doc. S/RES/743 (1992) (establishing the United Nations Protection Force in Bosnia). Moreover, the intervention in Kosovo was ratified *ex post* by the Security Council. S.C. Res. 1244, 49th Sess., 4011th mtg., U.N. Doc. S/RES/1244 (1999) (deploying a U.N. mission in Kosovo) [hereinafter S.C. Res. 1244].

44. Article 51 authorizes the use of force in self-defense. U.N. Charter, art. 51. *See also* Statement by the North Atlantic Council (Sept. 15, 2001), *at* http://www.nato.int/docu/pr/2001/p01-124e.htm (last visited Jan. 5, 2004).

45. *See* S.C. Res. 1483, U.N.SCOR, 58th Sess., 4761st mtg., U.N. Doc. S/RES/1483 (2003). The coalition included the U.S., U.K., Spain, Australia, and Poland among others.

46. U.N. Charter art. 2, para. 4 reads: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Although Saddam Hussein claimed Kuwait was a part of Iraq, Kuwait's independence was widely recognized and it was a member of the United Nations. *See* S.C. Res. 661, 45th Sess., 2933rd mtg., U.N. Doc. S/RES/6661 (1990).

At the time of the invasion of Kuwait, Iraq had an appalling human rights record. In 1990, Freedom House rated Iraq a 7,7 (the worst on its scale) and declared it a "not free" state.[47] At the time of the invasion, Saddam's regime had been condemned for "gross human rights violations committed on a massive scale in Iraq affecting all sectors of society."[48] These violations included the use of systematic police violence and the deployment of chemical weapons against Iraqi citizens as well as the suppression of basic rights.[49] The Report of the U.N. Special Rapporteur on the Human Rights Situation in Iraq from 1994 speaks to numerous examples of "political killings" and "cruel and unusual punishments" since 1990.[50] Without the need for further detailed analysis of these violations, it is clear that in 1990 Iraq seriously and systematically violated the basic human rights of its own population and engaged in international aggression against Kuwait.

The second aggressive interstate war since 1990 was the conflict in the Democratic Republic of Congo from 1998 to 2003. With the fall of Mobuto Sese Seko in 1997, the new Congolese government under President Laurent Kabila began to lose territory to the rebel organization, the Congolese Rally for Democracy (RCD). Angola, Burundi, Rwanda, and Uganda all backed the rebel movement to various degrees.[51] During the ensuing civil war in Congo, elements of the militaries of Rwanda, Burundi and Uganda entered Congo, engaged in military activities on its territory, and, at times, occupied Congolese territory.[52] Angolan forces entered Congo ostensibly to aid Kabila's government. Though no state was a clear aggressor in the conflict, since Rwanda, Burundi, Angola, and Uganda all engaged in military violations of Congo's territory, they will each be treated as aggressors for purposes of this analysis.

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47. Freedom House, Freedom House Country Ratings: Annual Survey of Freedom, Country Scores 1972-73 to 1999-2000: Iraq, *available at* http://www.freedomhouse.org/ratings/iceland.htm (last visited Nov. 8, 2003).

48. Amnesty Int'l, Iraq: Human Rights Committee Briefing, AI Index MDE 14/08/97, *at* http://web.amnesty.org/library/index/engmde140081997 (last visited Oct. 28, 2003) (referring to violations over the past decade).

49. *See* U.S. Dep't of State, Country Reports on Human Rights Practices: Iraq 1355–65 (1989); Human Rights Watch, Human Rights Watch World Report 1989: Iraq, *available at* http://www.hrw.org/reports/1989/WR89/Iraq.htm (last visited Nov. 8, 2003).

50. *Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives*, U.N. GAOR, 49th Sess., Agenda Item 100, at 12–22, U.N. Doc A/49/651 (1994).

51. *See* Federation of American Scientists, Military Analysis Network, Congo Civil War, *at* http://www.fas.org/man/dod-101/ops/war/congo.htm (last updated Dec. 21, 1999); Human Rights Watch, Human Rights World Report 1999, *available at* http://www.hrw.org/worldreport99/ (last visited Nov. 8, 2003).

52. *See* Blaine Harden, *Diamond Wars: A Special Report*, N.Y. Times, Apr. 6, 2000, at A1 (noting that "Burundi, Uganda, and Rwanda have sent soldiers to assist rebels" in Congo); Robert Graham, *Chirac Meets Mugabe in Bid to End Congo War*, Fin. Times, Mar. 7, 2001, at 12 (noting that troops from Rwanda and Uganda, among others, have occupied "chunks of Congo"); Victor Mallet & Michela Wrong, *Call for Congo Cease Fire After Neighbors Intervene*, Fin. Times, Aug. 24, 1998, at 14 (noting that "Angolan forces had seized the key western airbase of Kitona").

Each of the states that intervened aggressively in Congo during the period of hostilities has engaged in the serious and systematic repression of its own population, violating fundamental human rights in the process. Angola ranked a 6,6 "not free" in the Freedom House studies from 1998 to 2000.[53] During the period, widespread violations of fundamental rights by government forces, including rape and forced detention, were common.[54] From 1998 to 2000, Burundi's Freedom House ratings ranged from a 7,7 to a 6,6—indicating a "not free" state.[55] During 1998-1999, Human Rights Watch observed that "army and police violated the rights of citizens virtually unchecked" and the government had moved "hundreds of thousands [into] 'regroupment' camps."[56] Similarly, Rwanda was ranked a 7,6 "not free" during the period,[57] while HRW found that fighting between the government and insurgents led to "killing thousands—probably tens of thousands—of unarmed civilians during 1998."[58] Uganda fared slightly better in Freedom House's ratings, receiving a 5,5 "partially free" in 1999-2000.[59] Nonetheless, HRW found that "restrictions on political activity prevented those opposed to the government's policies from organizing and canvassing for support to bring change through electoral action" and that "the Ugandan army was also responsible for serious abuses against civilians."[60] The State Department Human Rights Report on Uganda for 1999 rated the state

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53. Freedom House, Freedom in the World 2003: Country Reports: Angola, *at* http://www.freedomhouse.org/research/freeworld/2003/countryratings/angola.htm (last visited Jan. 5, 2004).

54. The U.S. Department of State Country Report for Angola in 1999 described its human rights record as "poor" and characterized by "numerous serious abuses" including "extrajudicial killing" and widespread attacks on civilians." U.S. Dep't of State, Country Reports on Human Rights Practices—1999: Angola, *at* http://www.state.gov/g/drl/rls/hrrpt/1999/223.htm (last visited Nov. 22, 2003); *see also* Human Rights Watch, Human Rights Watch World Report 1999: Angola, *at* http://www.hrw.org/worldreport99/africa/angola.html (last visited Nov. 22, 2003).

55. Freedom House, Freedom House Country Ratings: Annual Survey of Freedom, Country Scores 1972-73 to 1999-2000: Burundi, *available at* http://www.freedomhouse.org/ratings/bolivia.htm (last visited Nov. 22, 2003).

56. Human Rights Watch, Human Rights Watch World Report 1999: Burundi, *at* http://www.hrw.org/worldreport99/africa/burundi.html (last visited Nov. 8, 2003). In 1997 Amnesty International found that Burundi carried out "political executions after grossly unfair trials." Amnesty Int'l, *Burundi: Government Carries Out Political Executions After Grossly Unfair Trials*, Aug. 1, 1997, AI INDEX: AFR 16/28/97, *available at* http://web.amnesty.org/library/index/engafr160281997 (last visited Nov. 8, 2003); *see also* U.S. Dep't of State, Country Reports on Human Rights Practices—1999: Burundi, *at* http://www.state.gov/g/drl/rls/hrrpt/1999/230.htm (last visited Nov. 8, 2003) (describing Burundi's human rights record as "poor" and noting numerous cases of "disappearances" and "torture").

57. Freedom House, Freedom House Country Ratings: Annual Survey of Freedom, Country Scores 1972-73 to 1999-2000: Rwanda, *available at* http://www.freedomhouse.org/ratings/phil.htm (last visited Nov. 22, 2003).

58. Human Rights Watch, Human Rights World Report 1999: Rwanda, *at* http://www.hrw.org/worldreport99/africa/rwanda.html (last visited Nov. 22, 2003).

59. Freedom House, Freedom House Country Ratings: Annual Survey of Freedom, Country Scores 1972-73 to 1999-2000: Uganda, *available at* http://www.freedomhouse.org/ratings/turk.htm (last visited Nov. 22, 2003).

60. Human Rights Watch, Human Rights World Report 1999: Uganda, *at* http://www.hrw.org/worldreport99/africa/uganda.html (last visited Nov. 22, 2003).

"poor."[61] In short, each of the three international aggressor states in the Congo conflict systematically denied the basic human rights of their own citizens.

The third major act of international aggression during the period was the 1999 war between Ethiopia and Eritrea. After a long period of tension along the Ethiopia-Eritrea border, in February 1999 troops from both countries entered into active hostility.[62] On February 27, 1999, the U.N. Security Council condemned the violence and demanded an immediate halt to the war.[63] Throughout 1999, significant fighting on the border continued with tens of thousands of casualties reported.[64] Again, this is not a conflict in which an aggressor state can easily be identified. During the period of fighting each state engaged in arguably aggressive conduct violating the territorial integrity of its neighbor. For our purposes both states will be treated as international aggressors.

During the period of conflict, both Ethiopia and Eritrea had appalling human rights records. From 1999-2000 Freedom House rated Ethiopia a 5,5, "partially free."[65] "Wide-scale human rights violations" were reported in Ethiopia in 1999, including the deportation or displacement of 400,000 civilians and the detention of at least 10,000 individuals for "political" crimes.[66] NGOs condemned Ethiopia for torture and extrajudicial executions.[67] The U.S. State Department Human Rights Report for Ethiopia in 1999 rated the country's record as "poor."[68] Eritrea likewise had an extraordinarily poor human rights record during the period. Freedom House rated it a 7,5—"not free."[69] The U.S. State Department criticized Eritrea's "serious problems."[70] The State Department noted examples of "arbitrary arrest and detention,"

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61. U.S. Dep't of State, Country Reports on Human Rights Practices—1999: Uguanda, *at* http://www.state.gov/g/drl/rls/hrrpt/1999/277.htm (last visited Nov. 22, 2003).

62. *See* Ian Fisher, *New Fighting Along Border of Ethiopia and Eritrea*, N.Y. Times, Feb. 7, 1999, at A4.

63. *See* Paul Lewis, *End Fighting, U.N. Council Tells Ethiopia and Eritrea*, N.Y. Times, Feb. 28, 1999, at A6.

64. *See Ethiopia-Eritrea War Heats Up*, N.Y. Times, June 27, 1999, at A4; Federation of American Scientists, Military Analysis Network, Ethiopia/Eritrea War, *at* http://www.fas.org/man/dod-101/ops/war/eritrea.htm (last visited Nov. 9, 2003).

65. Freedom House, Freedom House Country Ratings: Annual Survey of Freedom, Country Scores 1972-73 to 1999-2000: Ethiopia, *available at* http://www.freedomhouse.org/ratings/ethiop.htm (last visited Nov. 22, 2003).

66. Human Rights Watch, Human Rights World Report 1999: Ethiopia, *at* http://www.hrw.org/worldreport99/africa/ethiopia.html (last visited Nov. 8, 2003).

67. *See* Amnesty International, Report 2001: Ethiopia (2001), *at* http://web.amnesty.org/web/ar2001.nsf/webafrcountries/ETHIOPIA (last visited Jan. 5, 2004).

68. The report criticizes the government for extrajudicial killings, detention of the press, and severe limitations on the rights to assembly and association. U.S. Dep't of State, Country Reports on Human Rights Practices—1999: Ethiopia, *at* http://www.state.gov/g/drl/rls/hrrpt/1999/246.htm (last visited Nov. 22, 2003).

69. Freedom House, Freedom House Country Ratings: Annual Survey of Freedom, Country Scores 1972-73 to 1999-2000: Eritrea, *available at* http://www.freedomhouse.org/ratings/congo.htm (last visited Nov. 22, 2003).

70. U.S. Dep't of State, Country Reports on Human Rights Practices—2000: Eritrea, *at* http://www.state.gov/g/drl/rls/hrrpt/2000/af/782.htm (last visited Nov. 22, 2003).

and government control of the media.[71] Various NGOs found that numerous civilians were "jailed without charges" and "the small independent press was closed" during the 1999–2000 period.[72] Evidence suggests that both Ethiopia and Eritrea systematically abused the human rights of their own citizens during the period of aggressive war.

The fourth significant interstate conflict of the post–Cold War period was the 1999 war in Kosovo followed by the U.S.-led intervention. There are two elements to this conflict—first the war waged by Milosevic against Kosovo and, second, the NATO intervention. Though Kosovo was not an independent state, its autonomous status[73] was such that Milosevic's military campaign can be interpreted as aggression.[74] Such an aggressive war undertaken by Yugoslav forces against Kosovo, even if only quasi-interstate, is fully consistent with this thesis. In 1998-1999, Milosevic's regime in Yugoslavia was rated a 6,6—"not free"—by Freedom House.[75] The U.S. Department of State Country Report for Serbia in 1999 describes numerous cases of "extrajudicial killings, disappearances, torture, brutal beatings, rape, arbitrary arrest and detention" as well as a crackdown on the independent media and limits to the rights of assembly.[76] Serbia thus can be viewed as having engaged in aggressive war and was, at the time, a serious and systematic violator of human rights.

The second element of the conflict in Kosovo was the 1999 U.S.-led intervention. There are two different readings of the intervention. One possibility is that the U.S.- and NATO-led operations in Kosovo were legal acts of intervention and thus not aggression. Although the NATO member states did not receive advance authorization from the U.N. Security Council, the campaign was undertaken with a broad international coalition—NATO—and received ex-post ratification by the United Nations.[77] According to this in-

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71. *Id*.

72. Human Rights Watch, Human Rights World Report 2002: Eritrea, *at* http://www.hrw.org/wr2k2/africa4.html (last visited Nov. 22, 2003).

73. For a discussion and documents on Kosovo's history and autonomy, see generally Marc Weller, The Crisis in Kosovo, 1989-1999: From the Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities (1999).

74. Serbia sent several thousand heavily armed soldiers into Kosovo in 1998 to "wipe out a separatist rebel movement." Chris Hedges, *New Serb Assault On Albania Rebels*, N.Y. Times, June 2, 1998, at A1. The Independent International Commission on Kosovo describes the 1997–1999 conflict "both as an armed insurgency and counter-insurgency, and as a war (against civilians) of ethnic cleansing." Independent Int'l Commission on Kosovo, Kosovo Report (Oct. 2000), at 2.

75. Freedom House, Freedom House Country Ratings: Annual Survey of Freedom, Country Scores 1972-73 to 1999-2000: Yugoslavia, *available at* http://www.freedomhouse.org/ratings/turk.htm (last visited Nov. 22, 2003).

76. U.S. Dep't of State, Country Reports on Human Rights Practices—1999: Serbia-Montenegro, *at* http://www.state.gov/g/drl/rls/hrrpt/1999/358.htm (last visited Nov. 22, 2003).

77. For evidence of the broad international coalition involved in the attacks, see Statement by the North Atlantic Council on Kosovo (Jan. 30, 1999), *at* http://www.nato.int/docu/pr/1999/p99-012e.htm (last visited Jan. 5, 2004) (authorizing air operations in the region). For evidence of ex-post ratification, *see* S.C. Res. 1244, *supra* note 43 ("welcoming" the "political solution to the Kosovo Crisis" deploying U.N. forces in Kosovo, and requesting the appointment of a Special Representative for Kosovo).

terpretation,[78] the intervention in Kosovo was not an act of aggression and thus falls outside of the scope of this study.

A second reading of the U.S.-led intervention in Kosovo is that it constituted an illegal act of aggression, not initially sanctioned by the U.N. Security Council under Chapter VII.[79] Nonetheless, the intervention is consistent with the basic hypotheses above because it was undertaken by human rights respecting states against an abusing state in part to protect the population thereof. NATO coalition members which took action in Kosovo were human rights respecting states and deemed "free states" by Freedom House at the time of the conflict.[80] As indicated above, the human rights record of Yugoslavia at the time was appalling. The Independent International Commission on Kosovo found that between February 1998 and March 1999 "more than 400,000 people were driven from their homes during this period, about half of these were internally displaced."[81] Between March and June 1999, the Commission found the number of killings in the neighborhood of 10,000, with the vast majority of the victims being Kosovar Albanians killed by FRY forces.[82]

Moreover, the primary justification for the military action advanced by NATO was the protection of the human rights of the Kosovar people. The North Atlantic Council's January 30, 1999 statement authorizing NATO's use of force in Kosovo speaks of "averting a humanitarian catastrophe" and the "preservation of the rights of all ethic groups."[83] When President Clinton announced the initiation of military actions against Serbia he justified it in terms of "stop[ping] the brutal repression in Kosovo."[84] Similarly, soon after the initiation of the air campaign, British Prime Minister Tony Blair stated that "horrific repression by Serb forces in Kosovo is only emerging now" as a reason for the attacks.[85]

The final act of aggression in the post–Cold War period is the March 2003 U.S. invasion of Iraq. Once again, this attack has two possible read-

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78. For a more detailed discussion of this argument, see Alain Pallet, *Brief Remarks on the Unilateral Use of Force*, 11 EUR. J. INT'L L. 385 (2000) (noting that "arguments based both on the U.N. Charter and on the law of state responsibility can be made in [favour of the legality of the intervention] and indeed become persuasive when seen together with, and in light of, Resolution 1244").

79. This is the approach taken by the Independent International Commission on Kosovo, which found that "the NATO military intervention was illegal . . . because it did not receive prior approval from the United Nations Security Council." INDEPENDENT INT'L COMMISSION ON KOSOVO, *supra* note 74, at 4.

80. *See generally* FREEDOM HOUSE, FREEDOM HOUSE COUNTRY RATINGS: ANNUAL SURVEY OF FREEDOM, COUNTRY SCORES 1972-73 TO 1999-2000, *available at* http://www.freedomhouse.org/research/freeworld/2001/methodology.htm (last visited Nov. 22, 2003).

81. INDEPENDENT INT'L COMMISSION ON KOSOVO, *supra* note 74, at 2.

82. *Id.*

83. *See* Statement by the North Atlantic Council on Kosovo, *supra* note 77.

84. *Conflict in the Balkans: Clinton's Announcement of the Attack*, N.Y. TIMES, Mar. 25, 1999, at A15.

85. Prime Minister Tony Blair, Statement to Parliament on the NATO Summit in Washington (Apr. 26, 1999), *at* http://www.number-10.gov.uk/output/Page1300.asp (last visited Jan. 5, 2004). In addition, the Independent International Commission on Kosovo found that, though illegal, the intervention was "legitimate" because it "had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule." INDEPENDENT INT'L COMMISSION ON KOSOVO, *supra* note 74.

ings, both consistent with this thesis. One reading of the conflict is that it was legal and not an act of aggression. According to such a reading, advanced by, among others, British Attorney General Lord Goldsmith, Security Council Resolutions 678 and 1441 collectively provided authorization for the use of force.[86] This approach implies that the war is not an illegal act of aggression and thus should be excluded from the data sets used in this study.

A second reading of the war is that, lacking a U.N. mandate, the 2003 invasion of Iraq was illegal and constituted an international act of aggression.[87] Again, the war in Iraq can be consistent with the basic hypotheses if it was undertaken by human rights respecting states against a human rights abusing state and, at least partially, justified on that ground. At the time of the war, the United States and its main coalition partner, the United Kingdom, should both be classified as human rights respecting states, notwithstanding some criticism of U.S. human rights practices after September 11.[88] In 2002-03 Iraq remained a serious and systematic violator of human rights. Its 2002 Freedom House score was still a 7,7 "not free."[89] The 2002 U.S. State Department Country Report described Iraq's human rights record as "extremely poor," and noted that Iraq "continued to commit numerous, serious human rights abuses" including "numerous political and other extrajudicial killings."[90] Similarly, freedoms of the press, association, and assembly were severely limited.[91] In the wake of the conflict in Iraq numerous reports of mass graves, systematic torture, and extra-judicial killings have emerged.[92]

The protection of the human rights of the Iraqi people was also a significant—though not primary—justification for the conflict. Clearly, an overriding justification for intervention advanced by the United States was the alleged development of nuclear, chemical, and biological weapons by Saddam's regime. That said, the United States and its coalition partners often cited human rights violations in Iraq as an additional reason for the war. In September 2002 Prime Minister Tony Blair declared, "we want the

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86. Lord Goldsmith, *Lord Goldsmith's Statement*, TIMES (LONDON), Mar. 18, 2003, at 2.

87. For a discussion of this argument presented alongside other views, see Peter Ford, *As Attack on Iraq Begins, Question Remains: Is It Legal?*, CHRISTIAN SCI. MONITOR, Mar. 21, 2003, at 5.

88. Despite some criticisms of U.S. human rights practices, particularly with respect to the ongoing detentions in Guantanamo Bay, both the U.S. Bill of Rights (applicable to the U.S.) and the European Convention on Human Rights (applicable to the UK) ensure the basic human and civil liberties sufficient to guard the basic rights of human agency. *See* U.S. CONST. amend. I-X; European Convention on Human Rights, Nov. 4, 1950, *available at* http://conventions.coe.int/treaty/en/Treaties/Html/005.htm (last visited Jan. 5, 2004).

89. FREEDOM HOUSE, FREEDOM IN THE WORLD 2002: COUNTRY REPORTS: Iraq, *at* http://www.freedomhouse.org/research/freeworld/2002/countryratings/iraq.htm (last visited Nov. 22, 2003).

90. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2002: Iraq, *at* http://www.state.gov/g/drl/rls/hrrpt/2002/18277.htm (last visited Nov. 22, 2003).

91. *Id.*

92. *See, e.g.*, Patrick E. Tyler, *Aftereffects: War Crimes; Mass Grave In Iraq May Hold Kuwaitis Missing Since 1991*, N.Y. TIMES, May 17, 2003, at A1.

[Iraqi] people to live fulfilling lives without the oppression and terror of Saddam."[93] In his 2003 State of the Union address President Bush claimed that "[t]he dictator who is assembling the world's most dangerous weapons has already used them on whole villages."[94] Speaking to the U.N. Security Council on February 5, 2003, Secretary of State Colin Powell described "Saddam Hussein's violations of human rights" as a "subject of deep and continuing concern to this Council."[95] Reading the war in Iraq as an act of aggression by the United States and its partners is fully consistent with the argument of this Article because the war was waged in part to protect the human rights of civilians in an abusive state and was, to some degree, justified on those grounds.

Admittedly, this interpretation of the Iraq war is open to controversy and it is a hard case. Some may suggest an exclusive U.S. interest in oil and that the human rights justifications were but instrumental rhetoric. That does not, however, undermine the basic claim. Rather, the logic here suggests that, but for Iraq's human rights record, the United States would not and could not have undertaken the war as there would have been insufficient domestic support and even less international consensus. The fact that Bush and Blair included human rights rhetoric in their justifications for war indicates the importance of highlighting Iraq's human rights abuses in order to win popular acceptance of the war. Furthermore, the limits of that popular acceptance, where human rights violations are not part of the calculation, are a key element of human rights-aggression linkage.

These brief case studies suggest a strong correlation between serious and systematic human rights abuses at home and interstate aggression. Significantly, there were no interstate wars in the post–Cold War period launched by human rights respecting states against other human rights respecting states. Each of the interstate aggressive wars in the period was either initiated by a state that systematically violated its own citizens' basic human rights or was undertaken by a human rights respecting state at least in part to protect the human rights of citizens in an abusive state.

III. The Causes of the Human Rights Peace

There are strong theoretical arguments behind the apparent correlation between domestic human rights policy and international aggression beyond actual evidence from case studies. Two such pathways for human rights peace

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93. Prime Minister Tony Blair, Annual Address to the TUC (Sept. 10, 2002), *quoted in* Foreign and Commonwealth Office, Saddam Hussein: Crimes and Human Rights Abuses 2 (2002), *available at* http://www.fco.gov.uk/Files/KFile/hrdossier.pdf (last visited Jan. 5, 2004).

94. President George W. Bush, Address before a Joint Session of the Congress on the State of the Union, 39 Weekly Comp. Pres. Doc. 115 (Jan. 28, 2003).

95. Secretary Colin L. Powell, Remarks to the United Nations Security Council (Feb. 5, 2003), *at* http://www.state.gov/secretary/rm/2003/17300.htm (last visited Jan. 4, 2004). In calling on the Security Council to act, Powell referenced Saddam's use of "nerve gas against the Kurds" and on-going campaigns of "ethnic cleansing." *Id.*

draw on democratic peace literature, but do not rely on the role of free elections in constraining democratic government. First, a structural argument points to the constraints imposed by the institutionalization of human rights protection. Second, a political and social beliefs argument posits that the shared values and beliefs in the primacy of human rights impose limits on human rights respecting states but fail to impose such limits on human rights violating states.[96]

A. Human Rights and Institutional Constraints

One causal pathway rooted in liberal international relations theory that may explain the observed correlation between systematic human rights violations and interstate aggression is the institutional constraint that accompanies human rights protections.[97] Institutionalization of human rights norms has at least two powerful effects on state behavior. First, human rights protections govern how broad a spectrum of the community has at least some voice in the political decisions of the state. Even if the state is not a democratic polyarchy, if it provides basic protections for the human rights of all or most citizens, then a very broad spectrum of the polity is represented in political affairs. Freedom of thought and freedom from extrajudicial bodily harm, for example, allow citizens to develop their own views on political issues and, often, to express those views through public channels. A wider spectrum of voices, in turn, increases the level of political competition—one of the key structural explanations for the democratic peace—even without the establishment of a democratic form of government.[98] Of course, in a non-democratic, but human rights respecting state, the views of individual interests may not have a direct effect on state policy, but, arguably, they can still increase the level of political competition by facilitating debate and the exchange of ideas.

The second effect of institutionalized protections of human rights is to set a minimum floor of treatment for all citizens within the domestic polity. Even in a non-democracy, minimum human rights protections ensure that

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96. Both potential causal pathways draw heavily on liberal political science theory. For detailed specifications of this theory, see Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, 51 Int'l. Org. 513, 515 (1997). *See also* Michael Doyle, Ways of War and Peace 211 (1997). Liberal theory provides a way of understanding state behavior that renders the state transparent and yields explanations of state behavior based on domestic interactions within the national polity and their ability to affect government policy. In the liberal model, basic human rights protections directly affect the ability of citizens to influence their own government, and such protections are indicative of the relationship between the national government and its citizens.

97. Variants of the democratic peace hypothesis rely on institutional constraint logic and claim that the "democratic political structure imposes constraints on the decision-making processes by restricting key decision makers' freedom of choice." Morgan & Campbell, *supra* note 28, at 189–90. As applied to the human rights argument presented here, the claim is not that democracy imposes constraints, but rather that institutionalized respect for human rights limits the freedom of leaders of human rights respecting states.

98. *See* Morgan & Campbell, *supra* note 28, at 191 (observing that "the nature of political competition in a state should affect the level to which the leader's decision making capability is constrained").

rights are accorded to individuals not directly represented by the government. By ensuring a minimum treatment of the unrepresented, human rights protections prevent the government from externalizing the costs of aggressive behavior on the unrepresented. In human rights respecting states, for example, unrepresented individuals cannot be forced at gunpoint to fight or be bound into slavery to generate low-cost economic resources for war, and thus restrain the state from engaging in aggressive action. On the other hand, in a state where power is narrowly concentrated in the hands of a political elite that systematically represses its own people, the state will be more able to bear the domestic costs of war. By violating the human rights of its own citizens, a state can force individuals to fight or support the military apparatus in its war-making activities. Similarly, by denying basic human rights, a state may be better able to bear the political costs of war. Even if such a state had fair elections, denial of freedom of thought and expression might well insulate the government from the electoral costs of an aggressive foreign policy.[99]

B. Shared Human Rights Beliefs and Values

The social beliefs explanation begins from the proposition that individuals within human rights protecting states share a preference for a minimum set of protections of human rights. This assumption is appropriate for two reasons. First, according to liberal political science theory, state policy represents the preferences of some subset of the domestic polity.[100] If the observed state policy is to protect human rights, then at least some subset of the domestic polity must share that preference. Second, even if individuals within a domestic polity seek a variety of differentiated ends, basic respect for human rights allows individuals to pursue—to some degree at least—those ends as they define them. Liberal theory thus suggests that individuals within a human rights respecting state tend to support basic human rights provisions.

The next step in the social beliefs argument is to recognize that respect for human rights has an inherently universalist tendency.[101] Unlike cultural or national rights, human rights are just that—human. They apply as much

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99. With respect to the democratic peace hypothesis, Morgan and Campbell argue that "leaders who have to stand for popular election should be expected to take public attitudes into account when making decisions" and are thus subject to greater constraints. Morgan & Campbell, *supra* note 28, at 190. If even such elected leaders systematically deny their own population basic human rights, however, they might well be free from the supposed constraints of democratic governance.

100. According to liberal theory, governments "represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposefully in world politics." Moravcsik, *supra* note 96, at 518. In the liberal model, then, the state is not an independent actor, but rather a representative institution that serves as a "transmission belt by which the preferences and social power of individuals and groups in civil society enter the political realm and are eventually translated into state policy." Andrew Moravcsik, *Liberal International Relations Theory: A Scientific Assessment*, *in* PROGRESS IN INTERNATIONAL RELATIONS THEORY 3 (Colin Elman & Mirian Fendius Elman eds., 2002).

101. *See, e.g.*, IGNATIEFF, *supra* note 34, at 56–57.

to those individuals within a domestic polity as to those outside the polity. Such cosmopolitan liberalism indicates that "the more people are free, the better off all are."[102] The net result is that individuals within a human rights respecting state tend, on the average, to support the human rights of individuals in other states as well.

Given a set of universalist human rights values in states that respect human rights, the policy articulated by the government may be one which respects human rights at home and demands their protection abroad. This belief in a thin set of universal human rights may cause the leadership of the state to frame its security policy around that belief structure and to refrain from aggressive acts that would violate the human rights of citizens at home or abroad. As Peter Katzenstein argues, "security interests are defined by actors who respond to cultural factors."[103] Acts of international aggression tend to impinge on the human rights of individuals in the target state and, at least temporarily, limit their freedom. After all, bombs, bullets, death and destruction are not consistent with respect for basic human rights.[104] Framed in the liberal international relations theory terms of policy interdependence, international aggression by State *A* imposes costs on State *B*, whose citizens' human rights will be infringed upon by the act of aggression. This infringement in turn imposes costs on citizens in State *A*, whose citizens have a preference for the protection of the human rights of citizens in both states. This shared value of respect for human rights thus may restrain State *A* from pursuing international aggression.[105]

By contrast, a state which commits gross human rights violations against its own people will not be subject to this restraint. Such violations often occur when the government has been "captured" by a select minority that chooses to violate human rights. If the citizens themselves are not in favor of human rights at home, they are unlikely to be committed to the enforcement of human rights abroad. Where capture occurs, the government is not responsive to the preferences of the domestic polity. In such cases, even if there is a strong preference among citizens to protect human rights at home and abroad, the government is unlikely to respond to those interests and its policies will not be constrained by them.

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102. Owen, *supra* note 28, at 94. As John Owen has argued with respect to the democratic peace, "although beliefs and cultures may differ, liberalism says, all persons share a fundamental interest in self-preservation and material well-being." *Id.* at 93–94.

103. Peter J. Katzenstein, *Introduction: Alternative Perspectives on National Security*, *in* THE CULTURE OF NATIONAL SECURITY 1, 2 (Peter J. Katzenstein ed., 1996).

104. This social beliefs proposition further suggests that citizens in human rights respecting states "develop norms and expectations regarding proper methods of conflict resolution" that include respect for human rights. *See generally* Morgan & Campbell, *supra* note 28.

105. An important factor in such a cost-benefit analysis will be the rhetorical strategies chosen by various actors. Different strategies might accentuate or negate this phenomenon. This argument is similar to the normative value of "liberalism" that Owen sees as the definitive cause of the democratic peace. *See generally* Owen, *supra* note 28.

A significant corollary to this normative argument may explain why human rights respecting states may nonetheless engage in acts of international aggression against human rights violating states. When human rights respecting states intervene in human rights abusing states, leaders within the respecting state might deem themselves to be securing the human rights of the individuals in the violating state through the act of aggression. Thus, the shared normative value would cease to act as a restraint on interstate aggression and might well be a cause of aggression, particularly when other factors such as economic or security issues place such aggressive intervention high on the priority list of interests within the human rights respecting state.[106] This desire of human rights respecting states to free citizens in a human rights violating state may well explain cases of apparently aggressive aggression by human rights respecting states, such as the U.S.-led war against Iraq in 2003.

IV. Alterations to U.S. Foreign Policy Informed by Human Rights

Given the linkage between a state's domestic human rights record and its propensity to engage in international aggression, U.S. national security could be enhanced by a greater emphasis on the promotion of human rights in U.S. foreign policy. In short, better human rights practices around the globe make the United States safer and more secure. The human rights informed foreign policy presented here is intended to supplement and alter—not replace—traditional foreign policy. Such a policy would not neglect national security concerns, but rather would understand the promotion of national security and human rights to be related and mutually reinforcing goals. The linkage between human rights and international aggression offers a new means of predicting, preventing, and addressing potential aggressor states. Further, it suggests alternative mechanisms for dealing with pressing threats such as terrorism and WMD. Finally, it offers a new opportunity for renewed U.S. engagement with the U.N. in protecting international peace and security.

A. Human Rights Violations as a Predictor of Interstate Aggression

The first important role for human rights in such a new foreign policy is that of viewing human rights violations as a predictor of interstate aggression. If states that systematically violate their own citizens' human rights are more likely to engage in international aggression, a state's human rights record can indicate that state's propensity to endanger international stability, peace, and security. Admittedly, not every state with a poor human rights

106. Likewise, such actions by human rights respecting states against human rights violating states are far more likely when the costs and human rights violations of war can be minimized through the use of modern technology and specific targeting of those responsible for the violations. *See generally* Michael Ignatieff, Virtual War (2000).

record will become an interstate aggressor.[107] Other more traditional factors such as a state's military capability or the preferences of its political elites still matter. A state's human rights record nonetheless appears to serve as a good proxy for its aggressive potential. Thus, a poor human rights record should give pause for concern, not just on traditional grounds that individuals in that state are oppressed,[108] but also because that state may be more likely to engage in aggressive conduct.

Using human rights as a predictor of international aggression changes some of the countries the United States has identified as most threatening to international stability and/or U.S. security. In the past, U.S. policymakers have identified rogue states based on a number of factors including their military capabilities, their government's ideological stance, and their willingness to support the U.S. agenda. A state's human rights record should be an important part of that calculation. States with poor human rights records ought to be of greater concern because of the aggressive threat they may pose. Some states with negative human rights records, such as Iran or North Korea, are already termed rogue states for other reasons. Their human rights records suggest that they should be of even greater concern to the United States. Other states with troubling human rights records, such as Belarus, Zimbabwe or Sudan, have not traditionally been of significant U.S. policy interest. They should be. Even if they lack the capabilities to directly threaten the United States, their human rights records suggest they are prime candidates to engage in regional aggression that could well have destabilizing consequences, threaten international peace and security, and require U.S. action after the fact.[109] Finally, other countries presently of concern to the United States with fair or good human rights records may be less troubling because their human rights records suggest they are constrained by norms and institutions that make them unlikely to be aggressive.[110]

A human rights informed foreign policy would still recognize the particular dangers presented by the proliferation and use of WMD. Obviously, however, the acquisition of WMD by different types of states presents very

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107. Some states with particularly poor human rights practices may never pose aggressive threats. For example, Algeria generally lacks the military capability to pose an aggressive interstate threat. Similarly, Saudi Arabia, despite great military capability, probably lacks the governmental resolve to do so. To draw a complete picture of potential aggressors these other factors must also be considered.

108. *See, e.g.*, NATIONAL SECURITY STRATEGY, *supra* note 1, at 3 (noting that "in the twenty-first century, only nations that share a commitment to protecting basic human rights and guaranteeing political and economic freedom will be able to unleash the potential of their people and assure their future prosperity").

109. For a discussion of the human rights records of these countries, see, for example, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2002: Zimbabwe, *at* http://www.state.gov/g/drl/rls/hrrpt/2002/18234.htm (last visited Nov. 22, 2003);

U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2002: Sudan, *at* http://www.state.gov/g/drl/rls/hrrpt/2002/18228.htm (last visited Nov. 22, 2003).

110. This is not to say such states should be neglected. There may be good reasons for them to be a focus of U.S. policy, independent of their aggressive potential. Possible reasons could include involvement in the drug trade or immigration issues.

different levels of threat to the United States and the global community. As such, differentiation between acquisition of WMD by threatening and non-threatening states is necessary. A state's human rights record and practices provide powerful tools for such differentiation. If Sweden, for example, were to develop a nuclear capability, it would pose little threat to the United States or to global stability.[111] If, on the other hand, North Korea or Iran further develop such a capability, the threat would increase exponentially. States that systematically abuse human rights at home have already shown their willingness to use force against civilians and to take life indiscriminately. Moreover, they have a greater propensity to engage in aggressive war which might lead to the use of such weapons. When states that systematically violate human rights domestically acquire WMD they gain the ability to threaten a far wider region and even U.S. national security directly.[112]

The correlation between human rights abuse and international aggression suggests that the United States must take particularly strong measures to prevent human rights abusing states from acquiring WMD. Based on a similar logic, Lee Feinstein and Anne-Marie Slaughter have recently argued that there is an international legal "duty to prevent nations run by absolute leaders without internal checks on their power from acquiring or using WMD."[113] They suggest a menu of options to prevent such proliferation, including "diplomatic pressure or incentives, economic sanctions or inducements, or coercive action, often in combination."[114]

These policy alterations are open to at least two significant criticisms. First, some may argue that human rights abuses are not conclusive of an aggressive threat. They are correct. Alone, human rights records cannot tell with any certainty whether a state will engage in aggression. Including human rights practices in an overall assessment of a state's behavior, however, provides a far better indicator of that state's aggressive potential than merely looking at its military capabilities or political rhetoric. Second, some may claim that this expanded human rights policy will turn the United States into a global human rights police force, wasting important diplomatic capital. This policy does not obligate the United States to pursue human rights improvements in all countries at all times. Rather, U.S. policymakers will still need to determine selectively when additional human rights pressure would be effective and necessary.

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111. For a realist discussion of the role of threat and threat perception in national security, see STEPHEN M. WALT, THE ORIGINS OF ALLIANCES 17–28 (1987).

112. *See* Lee Feinstein & Anne-Marie Slaughter, *The Duty to Prevent*, FOREIGN AFF., January-February 2004, at 136 (noting the particular danger posed by "a relatively small group of clearly identifiable [human rights abusing] leaders who are not simply dictators, but also mass murderers. They are known to be dangerous to their own people and their possession of weapons of mass destruction makes them an even greater danger.").

113. *Id.*

114. *Id.*

B. Preventing International Aggression Through Human Rights Policy

In dealing with states of concern, improving a given state's human rights policy is almost never a primary goal of U.S. policy. A human rights informed foreign policy would include far more active advocacy for improvement in some states' human rights records. Such policies should be advocated not just for the traditional human rights reasons of life and human dignity,[115] but also because improved human rights records may enhance national and global security by preventing states from engaging in international aggression in the future. Even for skeptics of the universal duty to promote human rights on grounds of individual dignity, this second argument should have persuasive weight in asserting the strategic importance of human rights in U.S. foreign policy.

This argument would push the United States toward a far more active advocacy of human rights improvement in its bilateral relations with numerous countries. Rather than merely paying rhetorical dues to human rights, such a foreign policy would make clear to abusing states that human rights are a strategic priority of the U.S. government. It might involve linking foreign aid, trade ties, and other benefits to improvements in human rights records.[116] In extreme cases such a policy might even suggest military intervention through U.N. mechanisms. Two brief examples—China and North Korea—are illustrative. The U.S. dialogue with China has long included human rights issues, but also made clear that human rights would not stand in the way of a mutually beneficial economic relationship.[117] Though other factors such as economics should still be considered, human rights should be higher on the bilateral agenda, and the United States might be well served to use trade and other leverage points more vigorously in pursuing that goal.

United States policy toward North Korea presently focuses almost exclusively on nuclear and ballistic missile issues. While these issues are important, North Korea might be far less likely to use these technologies if its human rights policies improved significantly. Human rights improvement, therefore, should be higher on the agenda and an integral part of any future agreements with the North Korean government.

Again, some critics may argue that the United States will waste important diplomatic capital in the pursuit of human rights. The point here is that there are good reasons—beyond ideology and based on national security—to pur-

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115. Such justifications tend to be based on the innate worth of the individual as developed in the liberal political philosophy of writers such as John Locke and John Stuart Mill. *See, e.g.*, JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Peter Laslett ed., Cambridge Univ. Press 1988) (1690); JOHN STUART MILL, ON LIBERTY 73–85 (David Bromwich & George Kateb eds., Yale Univ. Press 2003) (1859).

116. President Bush's Millennium Challenge Fund takes a step in this direction by linking aid to domestic policy changes. Bush's proposal, however, is more concerned with democratization and market economics than with human rights policy. *See* The White House, Millennium Challenge Account, *at* http://www.whitehouse.gov/infocus/developingnations/millennium.html (last visited Jan. 4, 2004).

117. Clinton's continued renewal of China's most favored nation status is indicative. *See* Sanger, *supra* note 20.

sue human rights such that diplomatic capital will not be wasted. Nonetheless, as the Russia-Chechnya case study below illustrates, the United States will still need to balance a range of factors in formulating national security and may, at times, deem it necessary to put human rights lower on the agenda. The human rights-aggression linkage, however, provides an additional factor that augurs for greater attention to human rights in U.S. foreign policy.

C. Addressing Aggressor States: Human Rights and Interstate Signaling

A foreign policy which accounts for the linkage between human rights and interstate aggression would view a state's human rights record as a potential signaling device for its international intentions. Traditionally, it is very difficult for a state to send a signal to other states that it does not have aggressive international intentions. Asymmetric information in any international negotiation presents a significant challenge. One side rarely fully understands the interests and intent of the other.[118] Signaling offers a means by which states can overcome the problems of incomplete information by revealing their intentions to others. The difficulty with signaling, however, is that states often send misleading signals or they are misinterpreted by their audiences.[119] For signaling to be effective it is necessary to identify a clear indicator that can not easily be manipulated by the sending state or misinterpreted by the receiving state. Lasting institutionalized changes in human rights policy can provide such a signaling mechanism.

Significant improvements in a previously repressive state's human rights policy can signal an intent not to engage in international aggression. For such a signal to be credible the state must clearly do more than release a few political prisoners or offer pro-human rights rhetoric. But institutionalized changes in human rights policies—such as new legislation or constitutional amendments that are actually practiced, genuine limits on police and military power over citizens, or the independence of the judiciary to review the executive's human rights policies—offer credible signals that the state is less likely to engage in international aggression.[120] States of concern can utilize the linkage between human rights and international aggression as a means to send unambiguous signals of the lack of aggressive intent through institutionalized improvements in human rights practices. A foreign policy in-

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118. Kenneth A. Schultz, *Domestic Opposition and Signaling in International Crises*, 92 AM. POL. SCI. REV. 829, 829 (1998) (observing that "the primary danger associated with asymmetric information is that actors uncertain about their rivals' preferences will mistakenly take action that bring about an unwanted war").

119. *See id.* (noting that "[s]ince each state expects its rival to engage in strategic misrepresentation . . . sending credible signals of resolve" is thus difficult). *See also* James D. Morrow, *Signaling Difficulties with Linkage in Crisis Bargaining*, 36 INT'L STUD. Q. 153 (1992).

120. *See, e.g.*, Ellen Lutz & Kathryn Sikkink, *The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America*, 2 CHI. J. INT'L L. 1, 27 (2001) (noting "that the rule of law and an effective independent judiciary are crucial elements [of human rights protection in] any functioning democracy").

formed by human rights would closely monitor human rights developments so as to properly read such signals and potentially improve relations with states that institutionalize human rights protections.

The institutionalization of human rights protections is not only a means of signaling benign intent, but is also inversely correlated with a state's ability to engage in aggressive conduct. As a state embeds human rights protections in its domestic system—even without democratization—a number of structural changes occur within the society that limit aggressive potential. First, as Thomas Risse and Kathryn Sikkink have argued, a culture of human rights may develop within the population and become institutionalized domestically.[121] Such a human rights culture would reject international aggression as a threat to the human rights of citizens in other states. Second, institutionalization of human rights protections expands the ability of citizens to voice opposition to aggressive state policy through freedoms of belief, speech, and assembly. Third, institutionalization erodes the ability of the state to coerce its citizens into providing the resources and human capital necessary for aggressive war.[122]

A brief example is illustrative of the use of human rights policy as a signaling device. Iran is currently a state of considerable concern to U.S. foreign policy because of alleged WMD programs and links to terrorists.[123] Obviously, it is difficult for Iran to show that it *does not* seek WMD or links with terrorist organizations. One powerful means for Iran to escape its current categorization as a member of the "axis of evil" is to signal benign international intent through institutionalization of human rights protections. If Iran, for example, were to greatly expand its *de jure* and *de facto* freedoms of speech, assembly, and belief, the United States should read that as a signal of potentially benign international intent and seek to improve bilateral relations. This is not to say that WMD and terrorism should be ignored, but where allegations are hard to prove and impossible to falsify, human rights policy offers a good proxy of a state's international intentions and should be responded to as such. If, on the other hand, significant denigration of human rights policy, such as the January 2004 disqualification of nearly half the parliamentary candidates by the Guardian Council, were to continue in Iran,

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121. *See, e.g.*, Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms Into Domestic Practices: Introduction*, *in* THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 1, 3 (Thomas Risse et al. eds., 1999) (observing that "international human rights regimes and the principles, norms, and rules embedded in them are internalized and implemented domestically").

122. This is not to imply that human rights respecting states cannot and will not engage in international conflict, but rather that conflict will either be "legal"—sanctioned by the U.N. Security Council or constituting self defense—or will be undertaken to protect the human rights of citizens in abusive states.

123. *See, e.g.*, President George W. Bush, Address before a Joint Session of the Congress on the State of the Union, 38 WEEKLY COMP. PRES. DOC. 135 (Jan. 29, 2002) (declaring that "Iran aggressively pursues these weapons and exports terror, while an unelected few repress the Iranian people's hope for freedom").

that would signal a greater likelihood of international aggression and provide sound reason for a firmer U.S. policy.[124]

The institutionalization of human rights protections also provides a way for a current government to prevent future governments from aggressive international behavior. By locking in human rights protections now through constitutional changes or judicial review, a present government can limit the hand of future governments, denying them the institutional or political ability to engage in aggressive war or impinge on human rights.[125]

D. Human Rights and a New U.S.-U.N. Engagement

After the March 2003 failure to secure a new U.N. resolution authorizing the use of force in Iraq, many politicians and commentators claimed the U.N. was quickly becoming irrelevant. As Richard Perle put it: Saddam Hussein "will take the U.N. down with him."[126] Yet, at this time, the United States needs the U.N. more than ever to help transition to Iraqi rule. One potential means of rapprochement between the United States and the U.N. is to prioritize human rights issues through U.N. institutions. Just as human rights are separated from core issues of U.S. national security, so too are human rights issues rarely discussed in the U.N. Security Council.[127] They are instead handled largely by the U.N. Human Rights Commission and the relatively powerless Third Committee, which is tasked with humanitarian and cultural affairs.[128] This has limited the U.N.'s effectiveness in addressing human rights issues, with the rare exceptions of cross-border conflict or refugee flows.

A human rights informed U.S. foreign policy would seek to engage with the U.N. in addressing human rights abuses and pushing toward a more mainstream role for human rights in the Security Council. Multilateral efforts at human rights improvement—particularly through the U.N.—are far more likely to succeed than unilateral pressure from the United States. The two primary challenges to prioritizing human rights in the U.N. are, first, political challenges from some Security Council members and, second, the

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124. Gareth Smyth, *Iran Ballot "Could Include Banned Names*," FIN. TIMES, Jan. 23, 2004, at 6.

125. For a discussion of this lock-in mechanism in the context of the European Convention on Human Rights, see Andrew Moravcsik, *The Origins of International Human Rights Regimes: Democratic Delegation in Postwar Europe*, 54 INT'L ORG. 217 (2000).

126. Richard Perle, Editorial, *Thank God for the Death of the U.N.—Its Abject Failure Gave Us Only Anarchy. The World Needs Order*, GUARDIAN (London), Mar. 21, 2003, at 26; *see also* Michael J. Glennon, *Why The Security Council Failed*, FOREIGN AFF., May-June 2003, at 16, 30 (stating that "In the winter of 2003 th[e] entire edifice [of the U.N. Charter] came crashing down").

127. For discussions of the role of human rights considerations in the Security Council, see Richard B. Lillich, *The Role of the U.N. Security Council in Protecting Human Rights in Crisis Situations: U.N. Humanitarian Intervention in the Post-Cold War World*, 3 TUL. J. INT'L & COMP. L. 1 (1995); Note, *International Human Rights and Humanitarian Intervention: The Ramifications of Reform on the United Nations' Security Council*, 31 TEX. INT'L L. J. 107 (1996).

128. *See, e.g.*, U.N. General Assembly Third Committee, *at* http://www.un.org/ga/57/third/index.html (last visited Oct. 25, 2003).

Charter requirement that Chapter VII enforcement action be conditioned upon finding of a threat to international peace and security.[129] Though political problems in the Security Council will still need to be addressed, the linkage between human rights abuse and interstate aggression offers a new means for the Security Council to consider domestic abuse of human rights as a threat to international peace and security. This, in turn, could allow a more active use of Chapter VII enforcement tools by the Security Council to address human rights issues.

E. A Human Rights Foreign Policy in Action: Three Brief Examples

Three brief examples help illustrate how the linkage between human rights and international aggression would alter U.S. foreign policy. Iran and Liberia are states of some concern to the United States but have been treated very differently. Russia is becoming an important partner with the United States on a number of issues, but is responsible for serious human rights abuse in Chechnya. The goal of these examples is not to offer a comprehensive foreign policy toward the three states, but rather to show how a strategic connection between human rights and national security would modify U.S. policy for the better.

1. Iran

Iran has long been a foreign policy concern to the United States, primarily due to its official anti-U.S. ideology and its apparent desire to acquire WMD.[130] The foreign policy suggested in this article would still regard Iran as a state of considerable concern to the United States, but would add an additional reason, namely Iran's human rights practices. Since the Islamic Revolution of 1979, Iran has had a very troubling human rights record. Its Freedom House scores for the period have ranged from a 5,6 to a 6,7, indicating a "not free" state.[131] U.S. State Department reports on Iran have consistently described its human rights record as "poor" and noted that it is responsible for "extrajudicial killings and summary executions."[132] Iran's

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129. *See* U.N. CHARTER art. 39 (requiring the "Security Council . . . [to] determine the existence of any threat to the peace, breach of the peace, or act of aggression" before taking enforcement action).

130. *See, e.g.*, President George W. Bush, President Discusses Medicare, Iraq, Iran, and the Middle East, June 18, 2003, *at* http://www.whitehouse.gov/news/releases/2003/06/20030618-6.html (last visited Oct. 25, 2003) (noting that "the international community must come together to make it very clear to Iran that we will not tolerate the construction of a nuclear weapon. Iran would be dangerous if they have a nuclear weapon. I brought this subject up in the G8; we had a good discussion on the subject, with near universal agreement that we all must work together to prevent Iran from developing a nuclear weapon.").

131. FREEDOM HOUSE, FREEDOM HOUSE COUNTRY RATINGS: ANNUAL SURVEY OF FREEDOM, COUNTRY SCORES 1972-73 TO 1999-2000: Iran, *available at* http://www.freedomhouse.org/ratings/iceland.htm (last visited Nov. 22, 2003).

132. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—1999: Iran, *at* http://www.state.gov/g/drl/rls/hrrpt/1999/409.htm (last visited Nov. 22, 2003).

human rights record alone would place it near the top of the U.S. policy agenda as a potential aggressor state.

The human rights-aggression link suggests alterations in U.S. policy toward Iran. Current policy emphasizes preventing Iran from acquiring WMD,[133] which is admittedly important. The danger of WMD in Iranian hands, however, stems in part from the aggressive tendencies associated with Iran's human rights abuses. A dramatic improvement in Iran's human rights record would thus decrease the danger of the state's potential WMD acquisition. Part and parcel of U.S. non-proliferation goals, then, should be active advocacy of human rights improvement in Iran. Such a policy would differentiate reformist groups in government and civil society from conservative religious leaders. It would single out repressive elements within Iran—those particular clerics who seek to push Iran back toward totalitarian theocracy. Likewise, it would support elements within Iran that seek liberalization, democracy, and human freedom. That might involve beginning a conversation with President Mohammed Khatami and members of parliament through our European partners. It might involve changing rhetoric and granting minor concessions that strengthen Khatami's hand vis-à-vis the clerical leadership. Such a policy would encourage non-governmental efforts to engage with and assist Iran's NGO and academic communities. Finally, such a policy would require Iran's full participation in the war on terror and an end to its support for the Hezbollah.

A final alteration to current U.S. policy would involve close monitoring of Iran to look for signaling of benign international intent through improved human rights practices. For example, in late May 2003, the religious capital of Qom, from which the 1977 revolution emanated, hosted the International Conference on the Theoretical Foundations of Human Rights. Though this was but a small step, it pointed in the right direction. If institutionalized changes occur that limit the power of the executive/clerical leadership to repress basic rights or subject such actions to independent judicial review, it might be appropriate to reconsider Iran's labeling as a member of the "Axis of Evil." Admittedly, such institutionalization of human rights may take a different form in Iran, given its historical, religious, and political circumstances, but steps that limit the power of the government over citizens can still be observed by the United States. Such policy alterations would not solve all issues of the U.S.-Iran relationship, but they would shift the emphasis of U.S. policy and might prove more effective than the current approach.

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133. *See, e.g.*, Ari Fleischer, Press Briefings (Feb. 12, 2002), *at* http://www.whitehouse.gov/news/releases/2002/02/20020212-9.html (commenting that "when the President referred to the axis of evil, and identified North Korea, Iran and Iraq, what the President was referring to is . . . not only their support of terrorism, which is plain—they are on the State Department list of terrorist states—but also their development of weapons of mass destruction").

2. Liberia

In marked contrast with Iran, Liberia has, until recently, been of only very minor U.S. interest. According to a State Department report, the most notable aspect of U.S. involvement with Liberia before 2003 was that the United States "donated hundreds of tons of rice."[134] This, of course, changed in summer 2003 after Bush's African tour, when the White House demanded a U.N. presence in Liberia and affirmed that the United States would "participate with the troops."[135] A human rights-informed foreign policy would have paid far greater attention to Liberia prior to 2003. In the midst of a civil war, Liberia has demonstrated a poor human rights record. Over the past five years its Freedom House scores have ranged from a 7,6, "not free," to a 4,5, "partially free." The U.S. Department of State noted in 1999, for example, that the "government's human rights record remained poor," that the "security forces committed many extrajudicial killings," and that the judiciary "was unable to ensure citizens' rights."[136] While Liberia is unlikely to pose a direct threat to the United States, it has been an aggressive and destabilizing force in the region,[137] and American forces have been needed as part of the effort to restore international peace and security in the region.[138] Had U.S. foreign policy been informed by the human rights-aggression linkage, Liberia would have been considered of far more concern to the United States years ago. Greater U.S. participation in the process to end the civil war, more active advocacy for human rights improvements, and possibly the earlier engagement of U.N. peacekeepers in Liberia might have prevented the aggressive acts of which President Taylor stands accused.

Looking forward, a human rights informed foreign policy will stress different issues in the growing dialogue with Liberia. Rather than advocate for early elections to replace Moses Blah,[139] such a policy would recognize the importance of first establishing liberal constitutionalism, which guarantees basic human rights protections.[140] Moreover, the United States would push

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134. U.S. Dep't of State, Background Note: Liberia, *available at* http://www.state.gov/r/pa/ei/bgn/6618.htm#relations (last visited Oct. 25, 2003).

135. President George W. Bush, President Reaffirms Strong Position on Liberia, July 14, 2003, *at* http://www.whitehouse.gov/news/releases/2003/07/20030714-3.html (last visited Jan. 4, 2004).

136. U.S. Dep't of State, Country Reports on Human Rights Practices—1999: Liberia, *at* http://www.state.gov/g/drl/rls/hrrpt/1999/254.htm (last visited Nov. 22, 2003).

137. The indictment of Liberian President Charles Taylor by the Sierra Leone Special Court on charges of "'bearing the greatest responsibility' for war crimes . . . crimes against humanity . . . and other . . . serious violations of international humanitarian law . . . in Sierra Leone" is indicative of this aggressive threat. Human Rights Watch, *West Africa: Taylor Indictment Advances Justice*, June 4, 2003, *available at* http://www.hrw.org/press/2003/06/westafrica060403.htm.

138. *See* U.N. SCOR, 58th Sess., 4803rd mtg. at 7, U.N. Doc. S/PV.4803 (2003); S. Res. 1497, 58th Sess., at 2, U.N. Doc. S/Res/1497 (2003) (authorizing a multinational force for Liberia); *see also* Tim Weiner, *200 U.S. Marines Land in Liberia to Aid African Force*, N.Y. Times, Aug. 14, 2003, at A4.

139. *See Interim President Vows to Hand Over Office on 14 October*, AllAfrica.com, Aug. 28, 2003, *at* http://allafrica.com/stories/200308280327.html (last visited Jan. 4, 2004) (discussing the plans for Blah to give way to an elected government).

140. *See* Zakaria, *supra* note 30, at 256 (commenting on the necessity of "reintegrating constitutional

for the institutionalization of such protections so as to lock future regimes into positive human rights policies and the non-aggressive state behavior associated therewith. Finally, a human rights informed foreign policy would monitor for signals from Liberia of improving human rights—such as a more liberal constitution or enhanced powers of judicial review—that would indicate a decreased propensity for aggressive behavior and, therefore, the possibility of a declining need for U.S. concern.

3. Russia-Chechnya

The Russia-Chechnya case demonstrates both the power and the limits of a human rights-informed foreign policy. Russia has continued to engage in a range of practices that violate the basic human rights of citizens in Chechnya. Though Russia's 1999-2000 Freedom House score was a 4,5, "partially free," the NGO community has vigorously criticized its human rights practices in Chechnya. An April 2003 Human Rights Watch briefing provides evidence of at least three disappearances per week in Chechnya and "details new cases of extrajudicial killings, forced disappearances, and torture."[141] Amnesty International has accused Russia of grave breaches of international humanitarian law in the region.[142] Though human rights abuses are largely isolated in the Chechnya region, they suggest that Russia—or at least those military elements operating unrestrained in the region—presents an aggressive threat.[143]

In relations with Russia, U.S. policymakers have largely overlooked Russian human rights practices in Chechnya due to Russia's important role on numerous issues—ranging from the intervention in Kosovo to the global war on terror.[144] When asked whether the United States was taking a softer line with respect to Russian policy in Chechnya after a late September 2001 summit meeting between Bush and Putin, White House Spokesperson Ari Fleischer noted "President Putin's offer of concrete cooperation in the com-

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liberalism into the practice of democracy").

141. Human Rights Watch, *U.N. Should Censure Russia Over Chechnya Abuses*, Apr. 10, 2003, *available at* http://www.hrw.org/press/2003/04/unchr041003.htm.

142. Amnesty International, *Russian Federation: Chechnya For the Motherland, Reported Grave Breaches of International Humanitarian Law*, Dec. 1, 1999, *available at* http://web.amnesty.org/library/index/ENGEUR460461999 (last visited Jan. 5, 2004).

143. This is not to say that Russia presently harbors aggressive intent against the United States. Rather, the practices of the Russian military in Chechnya demonstrate, at the least, a lack of institutional restraint and control. The fact that these military elements are able to repeatedly engage in human rights violations is indicative that these same elements are capable of aggressive conduct—possibly without central government approval—against surrounding populations and states.

144. A November 2001 Joint Statement by Presidents Bush and Putin is emblematic of this new relationship: "Our countries are embarked on a new relationship for the 21st century, founded on a commitment to the values of democracy, the free market, and the rule of law . . . . Aware of our responsibility to contribute to international security, we are determined to work together, and with other nations and international organizations, including the United Nations, to promote security, economic well-being, and a peaceful, prosperous, free world." Joint Statement on New U.S.-Russian Relationship, Nov. 13, 2001, *at* http://www.whitehouse.gov/news/releases/2001/11/20011113-4.html (last visited Jan. 5, 2004).

mon fight against international terrorism" and observed that Bush "welcomes the sincere steps that have been taken by Russia to engage the Chechen leadership."[145] Condoleezza Rice has taken a similar position, observing that Bush would "discuss Chechnya in the following way—recognizing that terrorism can never be a legitimate method for any cause."[146] Abuses in Chechnya are simply not of overriding concern to U.S. policymakers.

The human rights-aggression linkage suggests that Russia—or at least some elements of the Russian military—may present an aggressive threat. As developed so far, a human rights informed foreign policy would place the abuses in Chechnya higher in the U.S dialogue with Russia—not merely mentioned as a side note, but integral to the future of U.S-Russia relations. Taken to an extreme, a human rights informed foreign policy might even condition issues of serious import to Russia—such as WTO accession or military cooperation—on improvements in human rights practices. To the degree that such policies reduce the likelihood of aggression by imposing checks on the power of the government, they would enhance national security.

The Russia-Chechnya example, however, also demonstrates the limits of a human rights-informed foreign policy. Admittedly, Russia is an important strategic partner and alienating Russia might prove dangerous in the war on terror or the prevention of nuclear proliferation. The unrestrained pursuit of human rights in Chechnya might diminish, rather than enhance, national security. What is needed, then, is intelligent and informed balancing that recognizes both the need for Russian cooperation on a range of issues and the potential aggressive threat posed by military elements engaging in human rights abuse in Chechnya. In some cases, such as cooperation on nonproliferation, the pursuit of human rights may still give way. Still, by recognizing the aggressive threat associated with human rights violations, such balancing would still place human rights in Chechnya far higher on the U.S. agenda than it currently is. Such a policy would also look for signaling of improved human rights practices in the region and respond by improving the relationship or granting various benefits to Russia.

V. Conclusion

Soon after the September 11, 2001 terrorist attacks, Michael Ignatieff asked: "Is the Human Rights Era Ending?" He asserted that for the movement to remain relevant it has "to challenge directly the claim that national security trumps human rights."[147] This article strives to do just that. It has suggested a correlation between a state's domestic human rights record and its propensity to engage in international aggression. In the post–Cold War

145. Ari Fleischer, Press Briefing, Sept. 26, 2001, *at* http://www.whitehouse.gov/news/releases/2001/09/20010926-5.html#Chechnya-Russia (last visited Jan. 5, 2004).

146. Condoleezza Rice, Press Briefing, Nov. 15, 2002, *at* http://www.whitehouse.gov/news/releases/2002/11/20021115-1.html (last visited Jan. 5, 2004).

147. Ignatieff, *supra* note 23.

period, every instance of aggression was either initiated by a state that systematically denied the human rights of its own citizens or was undertaken by a human rights respecting state at least in part to protect the human rights of citizens in the target state. Taken in conjunction with the numerous statistical studies on the democratic peace phenomenon, these findings appear likely to be accurate. Both institutional constraints and social beliefs may offer causal mechanisms for this human rights peace. Additional studies, relying on political science methods of statistical regression analysis, will be necessary to isolate other variables and prove the robustness of this correlation.

The strategic linkage between a state's domestic human rights record and its propensity for international aggression is sufficiently strong to advance the claim that the international promotion of human rights is integral to U.S. national security. By advancing the promotion of human rights around the globe, the United States can decrease the likelihood of international aggression and thereby enhance national security. In the post–September 11 world, it is all the more important that the United States reject the traditional view that human rights and national security are in competition or mutually exclusive and, instead, allow human rights to inform foreign policy. The resulting policy will not only reinvigorate the human rights movement, but will also make the United States more secure.